The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page ii.

VOL. LXXII. **Saturday, November 3, 1928.** No. 44

Current Topics.

Lord Atkin and the Magistrates.

THE MAGISTRATES' Association was particularly fortunate in securing Lord ATKIN as one of its speakers at its recent seventh annual general meeting, for besides his exalted rank in the judiciary he is also a magistrate for a petty sessional division in Wales, and as often as possible takes his seat upon the bench there. He was therefore able to address the Association in a very practical way; and his observations on a number of questions of current interest are of the greatest value. Amongst other matters he criticised the method of appeal from the summary courts as being unnecessarily technical and cumbrous; and he showed how badly the position of an appellant from these courts compares with that of the appellant from quarter sessions or assizes. The former must pay the costs of the appeal himself, but for the latter everything was done free. As his lordship added, this was an injustice that needed all the more to be remedied seeing that most of the criminal work of the country was now done by the summary courts. Upon another question we think most people will agree with Lord ATKIN. He declared that the penalties for the reckless driving of motor cars were often inadequate. For the first offence, imprisonment could not be imposed, though it might be that it was only thanks to the greatest good luck that the defendant had not incurred a charge of manslaughter instead of dangerous driving. Justices could now sentence a drunken motor driver to prison upon conviction for the first offence, but he thought they should have the same power in dealing with the reckless motorist, whom he regarded in some ways as worse than the drunken driver, because he knew perfectly well what he was doing when he committed the offence.

Summary Diligence in Scotland.

A SOMEWHAT peculiar, but extremely useful, feature of the law of Scotland is that known as summary diligence, by which the holder of a bill of exchange may enforce his remedies without recourse to litigation. Summary diligence appears to have been introduced into Scotland for the benefit of commerce by the Act of 1681, which statute, however, applied only to foreign bills. An Act of 1696 then made the procedure in question applicable in respect of inland bills also. By s. 98 of the Bills of Exchange Act, 1882, the law and practice in Scotland in regard to summary diligence is expressly saved. What then is the practice? The holder of a bill which has been dishonoured has it protested by a notary public, and he registers the protest in the books of the Court of Session, or, at his option, in the books of the Sheriff Court, within whose jurisdiction the debtor resides. An extract, duly certified, of the registered protest, which is practically equivalent to a judgment for the amount due, contains a warrant to charge the party liable to pay the sum with interest and charges within six days, and in default of payment within that period, the holder of the extract may levy execution. If for any good reason the person charged can allege that he is not liable he may bring what is called a suspension of the execution, but, as a condition of doing so, he may be required to find security or to consign in court the amount of the bill. It is noticeable that this summary remedy for the recovery of the amount due on a bill is expressly taken away from moneylenders by s. 18 (*h*) of the Moneylenders Act, 1927, which came into force on 1st January, 1928. In the recent case of *Murray* v. *M'Guire*, 1928, S.C. 647, the scope of this section was considered. There a moneylender had obtained an extract registered protest in December, 1927, and sough to levy execution in February, 1928. It was held that "summary diligence" meant the execution of diligence and not the obtaining the extract registered protest, and, accordingly, that the execution purported to be levied was invalid.

Keeping a Public House open during Repairs.

AT THE inquest arising on the deaths of two women, as the result of the collapse of the "Lord Nelson" public-house in the City Road, it was stated that the proprietors had, in accordance with legal advice, kept the premises open while structural repairs or alterations were carried out lest the licence should be endangered. The notion that a licence will be lost if there is the slightest discontinuity in sales of alcoholic liquor is widely prevalent, but it hardly appears to be more than a legal superstition. Indeed, it is boldly stated in "Montgomery's Licensing Practice" (7th ed., pp. 509, 510) that "Licensed persons other than innkeepers are in the position of ordinary shopkeepers and may close their premises whenever they choose to do so." *R.* v. *Rymer*, 1877, 2 Q.B.D. 136, however, which is given as authority for this proposition, is only to the effect that a publican is not bound to serve a particular customer. *Sealey* v. *Tandy*, 1902, 1 K.B. 296, is a similar decision. Possibly it is a fair deduction that the liberty to refuse to serve a particular customer without reason given applies to the public at large, and it follows that a licensed victualler, who is not bound to serve anybody, may close his premises even during permitted hours, *if not an innkeeper*. Obviously in the ordinary case he keeps open as long as he lawfully may and serves sober customers for two excellent reasons, namely, that it is to his personal interest to make profit, and that if his sales fell off, as no doubt they

would if he closed his house arbitrarily during permitted hours, his licence might not be renewed. Usually also, as a third reason, he is under covenant to keep open during the greatest number of days and the greatest number of hours that shall be allowed by law. In *Dartford Brewery Co.* v. *Till & Godfrey*, 1907, 95 L.T. 636, it was held that an innkeeper who proposed to close his bar on Sundays except to travellers and lodgers would be violating such a covenant, but that otherwise his proposed course would not be contrary to his duty as a publican. No doubt every tradesman tries to conduct "business as usual during repairs and alterations," but a licensee does not appear to be in a different position from the rest. In *Wilson* v. *Crewe JJ.*, 1905, 1 K.B. 491, a licence was transferred, although, by a somewhat strange condition, the licensee had been forbidden to sell liquor, and had not done so for three months or more. This is clear authority that the continuity of the sale of liquor is no condition for transfer, or, probably, for renewal of licence. On repairs and alterations there may, of course, arise a question of identity of the premises, and possibly continuous sale might be considered evidence of identity, but it would hardly be conclusive. If therefore there is any danger to the public in using premises during rebuilding, they can be closed without imperilling the licence, and, of course, should be. Such danger would also, it is apprehended, be a complete defence to action on such a covenant as that set forth above, and presumably even an innkeeper's legal obligations would be suspended in the circumstances.

The Doctrine of Environment.

Owners of premises affected by improvement schemes under the Housing Act, 1925, are complaining bitterly against s. 46 of this Act. This section provides (subject to a proviso) that the amount of compensation to be paid for land compulsorily acquired by a local authority (other than land included in such schemes for the purpose of making them efficient and not on account of the sanitary condition of the premises thereon or of those premises being dangerous or prejudicial to health) shall be the value of the land as a site cleared of buildings and available for development. Nearly every improvement scheme necessitates the demolition of houses and business premises perfectly sanitary in themselves, and which but for their environment are in no way dangerous or prejudicial to health. If the street in which they stand happens to be narrow, close, ill-ventilated or ill-lighted, it appears that local authorities make this an excuse for acquiring the property merely at its site value. This application of the doctrine of environment, as it is commonly called, is naturally very unpopular. At every local inquiry, efforts are made to get the Minister of Health to modify the scheme by excluding the sound property altogether, or, if its exclusion would prejudice the scheme, to include it only for the purpose of making the scheme efficient, when compensation upon a more satisfactory basis will be payable. The Act apparently permits the application of this doctrine of environment, and until an amending Act is passed, the Minister will be obliged to continue to sanction schemes which will result in cases of considerable hardship and develop resentment against bureaucracy. Property owners have a further and even more serious ground for complaint in regard to these improvement schemes. After acquiring their property certain local authorities, instead of proceeding immediately with their schemes or even within a reasonable time, have continued to allow the tenants to occupy the insanitary and dangerous dwellings and have collected rent from these tenants week by week over a period of two or three years. It would be interesting to know what authority there is for this practice which, to say the least, is contrary to the whole spirit of the 1925 Act. Offending local authorities, when challenged, are ready with a valid excuse for this delay. But what property owners cannot understand is why they are not allowed to retain their property until the local authority are actually ready to commence operations. In one or two cases this has been done and justice appears to demand that it should be made the rule rather than the exception.

Fines and the Changing Value of Money.

It is a curious fact that, although the value of money changes, maximum fines fixed by law before such changes take place are never, or hardly ever, varied. The penalty for profanely cursing and swearing is still only one shilling for a labourer, or common soldier or sailor, two shillings for anyone else under the degree of a gentleman, and five shillings for a gentleman or one above that degree. That amount was fixed in 1745. It is true that over a hundred years later it was held that the penalty may be calculated according to the number of oaths, which might be serious for a peer addicted to profanity. But the point, not affected by the fact that the Profane Oaths Act is a dead letter, is the absurdity of the maximum in these days when we are all gentlemen, and pay high prices out of large incomes. The recent very heavy depreciation in the value of money is, it is true, reflected in the large maxima of post-war legislation, the £250 on summary conviction, and the £1,000 on indictment, of the Dangerous Drugs Acts; but it is still only £20 for driving a motor car in a manner dangerous to the public, and 40s. for being drunk and disorderly. One would have supposed that the departments which rule in such matters would have thought of adding a bonus, not based on the illusory cost of living figures which govern the pay of civil servants. Quite seriously, many penalties which were once adequate have long ceased to be so, and it is high time a proposal made some years ago for the classification of offences and the settling of maxima on a considered basis should be taken up. This would have the additional merit of removing some of the traps for the unwary involved in the present haphazard system, and would enable the promoters of any Bill in Parliament, with penal clauses, to name the class of offence into which a new crime was to enter, and make more difficult some of the tinkering which takes place in Committee, for instance, the making the penalty a little graver to secure the right to trial by jury where there is no reason why the offence should be tried on indictment other than to give the wealthier defendant a longer run for his money.

Bogus House Agents.

It is difficult to imagine a more shortsighted policy of systematic fraud than that practised by a plasterer of Herne Hill, who was recently sentenced at Woolwich Police Court to four months' hard labour for obtaining money by a trick. His *modus operandi*, by no means novel, was to beguile optimistic house-hunters into paying a small deposit for the key and order to view of a house he had advertised. The fact that in some cases the house did not even exist only makes it the more remarkable that anyone with a grain of common-sense could have hoped to escape speedy detection. The credibility of the unsuspecting victim, however, is evidenced by the fact that the prisoner admitted twenty-six cases of a similar nature. Assuming that in each of these cases he received five shillings, which was the sum mentioned in court, his total revenue was only £6 5s., an amount scarcely calculated to tempt others to indulge in similar fraud at the risk of four months' hard labour.

The Complete Pedestrian.

If the example of Budapest is followed in England, and pedestrianism becomes a recognised school subject, not only may the streets become safer and the lot of the motorist less anxious, but also the field of cross-examination in running down cases and motor car prosecutions generally will become much wider. The hardy old question: "Do you consider yourself

a judge of speed?" will be varied with: "Do you put yourself forward as a skilled pedestrian?" or "What was your record at school in pedestrianism?" And what has hitherto been regarded as a mere gibe: "I suggest you were walking to the common danger," may be treated quite seriously as an issue in the case. Budapest citizens, it seems, have been accustomed to "meander dreamily across the streets" (so says the correspondent of a Sunday newspaper). It is long since Londoners enjoyed that privilege, but dwellers in more peaceful towns, even in England, have not yet learned that though the pedestrian may have first claim on the road, he ought not to insist on the whole of it. Motorists equally need reminding that the pedestrian and the cyclist, slow as they may be, are entitled to pursue their leisurely way. Mutual toleration and consideration, coupled with more imagination to appreciate each other's point of view, would do something to ease the traffic problem. The study of pedestrianism may show itself of practical value, and not a mere joke.

Deceiving a Machine.

A MAN was recently committed for trial from the Marlborough Street Police Court for various coinage offences, one being silvering nine farthings to make them into counterfeit sixpenny pieces. The evidence was that he had, with a soldering iron, run white metal on to the farthings, and that he put one of them into an automatic machine for the supply of cigarettes. The defendant took the point for himself that he was not disguising the farthings to enable him to pass them as sixpences, but merely adding to their weight so that they would operate the mechanism of the cigarette machines. For the prosecution it was argued that the process came within the section, as it did in fact make counterfeit coins acceptable by one test, that of weight, as sixpences, and the magistrate committed for trial on the count under s. 3, as well as those under other sections of the Coinage Offences Act, 1861. But a careful perusal of the section makes it appear that the prisoner really did stumble on a sound legal point. The processes contemplated are gilding, silvering, casing over or colouring to make coin of less valuable metal resemble coin of more valuable metal. To succeed in his argument would not avail him much, for a count will, one supposes, be added to the indictment for altering the farthings with intent to make them pass as sixpences, another form of offence under the same section. In fact those who drew the Coinage Offences Act seem to have been so acquainted with all unlawful methods of manipulating the coinage that it is extremely difficult to avoid the net. Automatic machines were not in existence in 1861, but careful drafting will cover a number of cases unknown to the draftsman. Automatic machines are not an entire and perfect substitute for human beings. In some respects the machines are preferable. They can, for instance, serve goods after the closing hour for shops, but a charge of obtaining chocolates by false pretences from an automatic machine (the false pretence being that a metal disc was a good and lawful coin of the realm) broke down because the automatic machine had no mind to be affected. This argument might be used by the ingenious defendant in the present case, who could urge that passing a counterfeit coin means inducing some living person to take the base coin through its resemblance to a good one. As, however, he pleaded guilty to other offences, the defence here suggested will probably be unused, but we can foresee that the Robotisation of commerce may yet produce some pretty problems in the criminal law.

Hotel Evidence in Divorce.

LORD MERRIVALE is reported to have expressed his satisfaction that his objection to the stereotype form of case where the evidence in an undefended wife's petition depends on a letter written to her by the respondent, enclosing an hotel bill, has been met by his Bar and their clients. He observes that the cases which have been presented, though relying on what is called "hotel evidence," have "manifestly been honest cases where adultery was committed, and where there has not been any reason for suspecting collusion between the parties." Of course, the fact that the husband sends the wife the bill is good evidence that he desires his freedom, and, where two intelligent persons strongly desire a particular end, the possibility of united action is always present. It by no means follows, however, that a husband, who knows that this straightforward method of informing his wife of his real or pretended infidelity to her will prejudice her case, will not find other and equally effective means of placing the evidence before her. He might, for example, secretly let her know when he was going to stay at a certain hotel, and she could then set detectives on him a few days before. As Mr. Justice BARGRAVE DEANE observed in testifying before the Royal Commission on Divorce: "You can smell collusion"—but the smell, though it may pervade the court and be obvious even to the judge, is not legal evidence of it. And amongst the classes whose members desire easy divorce, it is generally known that the screen which decorously hides the evidence of collusion must not only be placed between that evidence and the judge, but must also shield solicitors and counsel from the sight of it, whatever the latter may guess as to what is passing behind. In respect of his lordship's pronouncement, however, it may be observed that a wife whose husband, without previous communication of his intention to her, sends her an hotel bill as evidence of his adultery, is fully entitled to her divorce, and should obtain it without undue delay. And she should obtain it the more easily because, after his lordship's remarks, collusive cases are not likely to be presented to the court in the old way, which is now under a cloud, but in the form in which the court appears most likely to grant divorce.

A Social Menace.

IN A recent issue we commented upon the Bill before the New Zealand Parliament for the sterilisation of "social defectives." Since then, somewhat similar legislation has been proposed both in Hungary and in Czecho-Slovakia. There is thus a wide recognition of the social menace attending the procreation of children by persons who may pass on some hereditary taint. Those who are interested in this question will find further material for reflection in "Mass Murder," by L. C. DOUTHWAITE (JOHN LONG) 18s. In this book the author deals with the psychology of the mass murderer—the criminal who, unlike the average assassin whose purpose is fulfilled by one killing, adopts murder as a profession. Whilst admitting that such persons may not be insane in the legal sense, Mr. DOUTHWAITE contends that their mentality is frequently affected by some hereditary taint; in other words, he declares that the mass murderer is generally the product of social defectives, and (one may consequently deduce) therefore a social menace which could be checked by the prevention of procreation by such parents. In support of this contention, the author adduces ten examples, which, it must be admitted, corroborate his theory in no mean degree. Three are particularly impressive: PALMER, the Rugeley poisoner, was descended on both sides from a long line of drunkards and moral perverts; EARLE NELSON, who was hanged this year at Winnipeg for twenty-two murders, was the son of a syphilitic father, and had been affected by this hereditary taint since birth, having on three occasions been confined in a lunatic asylum; FRITZ HAARMANN, the German murderer of forty boys, executed in 1924, was the offspring of degenerate parents, his brother and sisters taking similarly in a minor degree to crime. This book also reminds us of a case which provides a powerful argument for those who believe in the retention of capital punishment; in 1891, NEIL CREAM was released from a sentence of seventeen years imprisonment in America for murder; had he been executed, four lives would have been saved, for it was after his release that he murdered the four wretched women frequenters of South London streets.

Landlord and Tenant Act, 1927

By S. P. J. MERLIN, Barrister-at-Law.

III.

The Landlord's Position where a Tenant Claims Compensation for Loss of Goodwill.

In the two previous articles the provisions of this Act have been looked at more from the point of view of the new rights given to tenants than from the landlord's point of view, which is, of course, to a great extent correlative to that of the tenant.

One of the first comments which is aroused by a perusal, and which can be justly made on this Act as a whole, is that it has throughout, generally speaking, provided large, if not complete, protection to the good landlords among us, and that it only hits the bad landlords, or those who, but for its new enactments, might have had opportunity to become bad landlords.

In considering the landlord's position under the Act, let us take, first, the common case of a tenant whose lease of, say a shop at £300 a year for twenty-one years, is falling in in 1930. The tenant has given the necessary formal notice under s. 4, claiming, say £2,000 compensation for loss of goodwill. The landlord, may be, is taken by surprise by this unexpected demand of a capital nature and wants to know his position. We will assume that the tenant is a one-shop tailor carrying on a busy medium class business in the high street of a large provincial town, where the rents of business premises have, during the last twenty-one years, appreciated 50 per cent.

In the above circumstances, which are typical of a common class of case which is arising, there are various replies or courses open to the landlord. If he be quite content to let the tenant remain in the premises, provided he is willing to pay a fair market price rent for his premises (that is, a fair rent apart altogether from the goodwill value he may have attached to the holding), the Act provides that :—

> "The tenant shall not be entitled to compensation in respect of such goodwill if within two months after the making of the claim the landlord serves on the tenant notice that he is willing and able to grant to the tenant, or obtain the grant to him of a renewal of, the tenancy of the premises at which the trade or business is carried on at such rent and for such term not exceeding fourteen years as, failing agreement, the tribunal may consider reasonable; and if the tenant does not within one month from the service of the notice send to the landlord acceptance in writing of the offer the tenant shall be deemed to have declined the offer."

If, on the other hand, the landlord at the end of the lease requires to demolish and rebuild the premises, or to use them for a different or more remunerative purpose, the tribunal must have regard to the effect of such demolition or change of user on the value of the goodwill to the landlord. This is clearly set out in the proviso to sub-s. (1) of s. 4, which also directs that the sum to be awarded to the tenant for his goodwill shall not exceed such addition to the value of the holding at the termination of the tenancy as may be determined to be the direct result of the carrying on of the trade or business by the tenant. Although the Act does not say so anywhere in so many words, it seems clear from this proviso and the implications of the other sub-sections of s. 4, that the intention of the Legislature was to make the landlord liable to pay only such a sum as compensation to the tenant, for the loss of his goodwill, as the landlord could himself secure by re-letting the premises at a higher rent, in consequence of the goodwill which remained attached to the premises.

Furthermore, there are various other safeguards provided by the Act for the landlord against whom a claim for goodwill is being made. For example, the tribunal, in determining the amount of compensation for goodwill, must disregard any value which is attributable exclusively to the situation of the premises; and it likewise also must have regard to the intentions of the tenant as to carrying on the trade or business elsewhere, and may make it a condition of its award that the tenant shall undertake not to carry on the trade or business within such distance of the premises as may be specified in the award of the tribunal.

And in those cases where a landlord has built an arcade, or a row of, say, twelve shops, and let them to twelve different types of business, with restrictions in his leases preventing them from competing with each other, the Act here again provides that the landlord shall not pay unduly for a goodwill which he himself by his restrictions and good estate management has largely created. Clause (*e*) of s. 4 enacts that where the landlord proves that the value of the goodwill has been created or increased owing to restrictions imposed by the landlord, whether by agreement with the tenant or not, upon the letting for a competitive trade or business of other premises in the neighbourhood owned by or under the control of the landlord, the tribunal shall have regard thereto and may refuse the application for compensation or may award a reduced amount of compensation. With regard to the question of the "situation" of the premises, there are many businesses whose goodwill is largely dependent on this factor. Take, for example, the instance, so often put forward in debate, that of the fruiterer's shop at the entrance to a busy railway station and belonging to the railway company. The business of such a shop depends in great part on the multitude of passers-by leaving and entering the station. That is to say, they are brought there, primarily, by the business of the landlords, and in those cases a certain part of the goodwill of such premises would always be attributable to the peculiar situation of the premises. In such a case, it is submitted, that the tribunal can and should sever the two types of goodwill, namely, the situational goodwill and personal goodwill of the tenant, if any, and only give the tenant such compensation as may be fair in all the circumstances.

Summing up the cases where the right of a tenant to compensation may be partially or wholly lost or extinguished the following examples may be noted. Firstly, when the landlord is demolishing or changing the user of the premises, and in that way proves that the goodwill of the tenant will in no way enure at the premises for his financial benefit; secondly, where a tenant can be shown to be taking away the entire goodwill with him, as will occur in many types of multiple shops; thirdly, where it is proved that it is entirely or largely due to the site of the business; fourthly, where on a claim for compensation being made the landlord offers the tenant a new lease on the fair terms of the Act, and the tenant does not accept the offer within one month he will lose all rights to compensation.

First Decisions under the Landlord and Tenant Act, 1927.

Those who have read the two interesting and instructive articles by Mr. S. P. J. Merlin on the Landlord and Tenant Act of 1927 will have observed that he refers to the case of *The Cambridge Chronicle, Ltd.* v. *Kane*, heard on the 18th October, as the first which has come to actual trial in a public court (72 Sol. J. 720). This case, in which a settlement was arrived at by counsel, was not, however, the first to be tried under the Act, that distinction belonging to the case of *Meredith* v. *Williams*, before His Honour Judge Ivor Bowen at the Brecon County Court on the 9th October. In conjunction with the articles appearing in these columns and in view of the importance of any decision under this statute the judgment of the learned county court judge is given below at length. The facts appear sufficiently in the judgment :—

This is the first action fought on this circuit under the Landlord and Tenant Act, 1927, which gives compensation to

outgoing tenants of business premises for improvements and goodwill, or, as an alternative, secures the renewal of a lease. The serious responsibility of settling the important questions which inevitably must arise in such cases is placed upon the judges, who have to, and will, administer and apply the complicated provisions of this Act to the best of their ability, without the help of precedents and in the absence of clear definitions as to what "goodwill" and other terms mean. The Act amends the general law as to landlord and tenant. It affects titles, and dispositions of property, and leaves to the tribunal the formidable task of settling upon such evidence as is available what the new conditions of lease shall be, and the amount of compensation to be paid or secured to the tenant in respect of goodwill. In this case the plaintiffs claim a new lease in lieu of that which they now have of business premises situate at 8, High Street, Brecon. They have at present a lease of twenty-one years expiring on the 25th March, 1929. The defendant is a tenant for life, a lady of advanced age. On her behalf, her agent, exercising rights preserved by the Act, opposes the grant of the proposed new lease on the grounds that (1) it is intended to demolish or re-model the premises, and (2) that the possession of the premises is required in order to carry out a scheme of re-development.

The court has power to grant a new lease for a period not exceeding fourteen years, and on such terms as it thinks proper, the rent fixed being one which willing parties would pay and accept for the premises. The tenants must be able to establish three things: (1) That they are suitable tenants; (2) that they are in a position to make a claim for goodwill; and (3) that the compensation they would obtain for it would not in fact indemnify them against the loss they would suffer by removal. Upon the evidence, I find that the tenants have firmly established their case on the three points. Goodwill, as I have pointed out, is not defined by the Act. In one way it may be said to be the benefit and advantage of the good name, reputation and connexion of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. I find upon the evidence that, as a consequence of the trade or business carried on by the tenants for over twenty years, a higher rent could be obtained for the premises by the landlord than before, and that this higher rent is not only increased by the development in Brecon, but that it is the direct result of the plaintiff's trading. I find that the tenant is in a position to make a claim for goodwill. The landlord, through her counsel at the trial, re-considered the position and withdrew the scheme for re-modelling. Thus he gets rid of paying any sum which might be awarded for compensation for goodwill, which must have imposed a burden on the owners of the premises. The parties submitted their views as to the terms upon which a new lease should be granted. They were very wide apart. The difficult task is left to the court to decide what order should be made. I order that a new lease of the holding situate at 8, High Street, Brecon, be granted to William John Meredith and Henry Meredith. The grant of this new lease is to be for the term of ten years from the 25th March, 1929, at the rental of 100 guineas per annum, and on the terms and conditions of the present lease as regards repairs, etc. The terms of the lease are to be agreed by the parties. If they fail to agree the lease will be settled by the court, to which liberty to apply is given to either party. A condition, which is required by the landlord, is to be inserted in the lease under s. 5, sub-s. (5), of the Landlord and Tenant Act, 1927, providing for any scheme of re-development after seven years if required by the landlord. There is nothing in this case which prevents the operation of the rule as to costs, which follow the event. The plaintiffs are entitled to costs of these proceedings on Scale B, and I certify for no local Bar fee to counsel.

Housing: Some Legal Difficulties.

By RANDOLPH A. GLEN, M.A., LL.B.

As a complement to my recent articles on "Town Planning," I have been asked to contribute a short series on the kindred subject, "Housing." Unlike town planning, housing has been the topic of many decisions in the courts, and it is mainly with these that I propose to deal.

The consolidating Act of 1925 is divided into five Parts, the statutory headings being: I. "Provisions for securing the repair maintenance and sanitary condition of houses"; II. "Improvement and reconstruction schemes"; III. "Provision of houses for the working classes"; IV. "Financial provisions"; and V. "General." In reality there are three main groups of provisions, and they may be conveniently headed: I. "The Repair of Individual Houses"; II. "The Clearance of Slum Areas"; and III. "The Provision of New Houses." I therefore propose to group the decisions under these three heads.

The Repair of Individual Houses.

First, as to the class of houses that may be dealt with. In *Arlidge* v. *Tottenham U.D.C.*, L.R. 1922, 2 K.B. 719, it was sought to limit the class by reference to the rents specified in the sections (14 and 15 of the Act of 1909, now s. 1 of the Act of 1925) which related to the statutory "implied conditions" in contracts for letting, namely, now, £40 per annum in London and £26 outside. This effort failed, the Divisional Court holding that the expression "any house suitable for occupation by persons of the working classes" must be construed in its natural and ordinary sense. Though, therefore, a mansion would not come within the section, the line must be drawn somewhere, and, if the local authority do not seek to apply their power to a house obviously outside the scope of the Act, the court would probably not interfere.

Assuming that the house is of the requisite class, the local authority may, under s. 3, serve a notice requiring the owner to make it "in all respects reasonably fit for human habitation." The owner who wishes to dispute the notice may either (*a*) appeal at once to the Minister of Health upon the question whether the repairs are needed or not; (*b*) serve a counter-notice that the house is "not capable without reconstruction of being rendered in all respects reasonably fit for human habitation," in which case either he or the local authority may appeal to the Minister of Health on the question whether "reconstruction" is necessary; or (*c*) do nothing, let the local authority do the work they consider necessary, and then defend proceedings for recovery of the expenses. The dangers of the third course will be dealt with in a subsequent article.

As to case (*a*), the inspector holds a local inquiry, views the premises, and reports to the Minister as to what should be done. If the rack rent owner does not appeal to the Minister when he receives the notice, the freeholder cannot raise points, which could have been so raised, when the charge for the expenses is sought to be recovered (*Paddington B.C.* v. *Finucane*, 1928, Russell, J., 92 J.P. 68). This case was followed in *Bristol Cpn.* v. *Virgin*, 1928, 44 T.L.R. 546, in which the Divisional Court held that this charge was one on the whole of the proprietary interests of the premises and therefore had priority over a fee farm rent-charge previously reserved on the grant of the fee simple.

As to (*b*), in *Rex* (*Nail Making Machines, Ltd.*) v. *Poole Corporation* (1923, "Glen's Public Health," 1925 Ed., at p. 1146), the owner served such a counter-notice and twice requested the local authority to serve on the occupier notice of the closing order which had thereby become operative, and the local authority passed a resolution that "no further action be taken," and the owner obtained an order *nisi* for a writ of mandamus directing the authority to serve such notice on the ground that the refusal to do so was a breach of the statutory duty imposed by s. 17 (4) of the Act of 1909. Three days

after the order *nisi* had been made, the authority appealed to the Minister of Health against the counter-notice, alleging that the house was capable of being rendered fit for human habitation without reconstruction. The rule was discharged, the court in the exercise of its discretion declining to interfere, as there was no time limit for such an appeal, and the proper tribunal to decide such a question was the Minister of Health. Subsequently the local authority's appeal was dismissed, the Minister holding that the cottages, which were dilapidated, and one wall of which was bulging after it had fallen down and been replaced, could not be repaired without reconstruction. The local authority's estimate for doing the work was £180, and the owner's was £450. The rateable value of each cottage was £5 12s. per annum.

The High Court has not yet been asked to construe the expression "reconstruction," and there is no definition in the Act, so it may be useful to note that in June, 1921, the Ministry, in their official publication called "Housing," made the following observations:—

> "Difficult questions arise as to the meaning of the term 'reconstruction' used in this section. Mere repair work, though extensive, can hardly come under this category. The broad line of distinction would seem to be between such work and work affecting the fabric. The term may be taken to mean generally the reconstruction of the house as a whole. There may be cases, however, other than those involving reconstruction as a whole, where requirements of a considerable and expensive structural alteration can properly be regarded as reconstruction. Though the cost of the work required is not a legal criterion from which reconstruction may be inferred, it is nevertheless an important one which must be borne in mind in forming a conclusion on the question. In other words, reasonableness and proportion must be a governing consideration."

The rest of the observations will be found in "Glen's Public Health," 1925 Ed., at p. 1146. The above cited *Poole Case* affords a good illustration of the application of this explanation of the term "reconstruction."

Next week I propose to deal with case (*c*).

(*To be continued.*)

A Conveyancer's Diary.

Construction of Substitutional Gift to a Class; Use of the Present Tense or Historical Aorist.

A correspondent suggests that a difficulty may arise in the construction of provisos whereby substitutional gifts are made by wills in what is now accepted as a common form. Thus, in 3 Prid., 22nd ed., p. 744 (Precedent No. III entitled: "Will of a widower or widow giving everything to children who are all of age"), there is a proviso in the following form:—

> "Provided that, if any child of mine dies in my lifetime leaving issue living at my death, the share or interest to which such child would have been entitled if he or she had survived me shall go and devolve as if such child had survived me and died immediately after my death, etc."

The suggestion made by our correspondent is that the use of the present tense or historical aorist ("dies") creates a doubt as to whether a child who died before the date of the will is included or excluded by the proviso, and that the substitution of "shall have died" for "dies" would obviate the difficulty.

Now, if the words used in the common form were "shall die" then a difficulty might arise for there are two lines of cases each on a different side of the border, and it would have to be decided which line was applicable. The principle to be applied in arriving at such a decision has been stated as follows:—

> "The question is one entirely of intention, and it is obvious that in cases of this kind a testator may mean to *include* as objects of his bounty, or he may mean to *exclude*, the issue of the pre-deceased children. When a testator directs that issue shall represent or stand in the place of or be substituted for a deceased child, and take the share which their parent would have taken if living, he may intend such representation or substitution to apply only to the case of a child dying subsequently to the date of his will and before the time of his own death; or he may mean it to extend also to the case of a child who was already dead at the date of the will. The solution of the question, which of the two he intended must . . . depend on the language he has used in directing such representation or substitution. He may use language of such restricted import as to be inapplicable to any children but such as were living at the date of the will. But if he uses language so wide and general as to be no less applicable to a pre-deceased child than to a child living at the date of the will, then the direction as to such representation or substitution must be held to embrace both": per Kindersley, V.C., in *Loring* v. *Thomas*, 1 Dr. and Sm. 510, quoted with approval by Lord Macnaghten in *Barraclough* v. *Cooper*, reported as a note to *Re Lambert*, 1908, 2 Ch. 117, 121, 125.

In *Loring* v. *Thomas*, *supra*; *Barraclough* v. *Cooper*, *supra*; and *Re Lambert*, *supra*, there was a substitutional or representative gift enlarging the class to whom a prior gift was made by the will, and in all three cases words of futurity ("shall die") were used in describing the addition to the class. The additional class in each case was held to include representatives of a member who was already dead at the date of the will; "shall die" in each case being construed as equivalent to "shall have died." "The words 'shall die,'" observed Lord Lindley in *Barraclough* v. *Cooper* (at p. 126) "are an old phrase that has been treated over and over again as equivalent to 'shall be dead.' As long ago as Lord Coke's time we find it stated by him that as *procreatis* shall extend to issue which may be begotten, so *procreandis* shall extend to issue already begotten."

Similarly, in *Re Williams*, 1914 2 Ch. 61, the court of Appeal following *Barraclough* v. *Cooper*, *supra*, held that a proviso in favour of the issue of any child of the testator who "shall die" etc., did not exclude the issue of a child who was dead at the date of the will. "I must," said Cozens-Hardy, M.R., "hold that the words 'shall die' are equivalent to 'shall be dead'—that is quite well settled."

On the other hand, in *Re Cope*, 1908, 2 Ch. 1, the Court of Appeal gave a literal construction to a proviso adding representatives of any child who "shall die." They distinguished the case from *Barraclough* v. *Cooper*, on the ground that the subsequent gift in the latter case "was not, properly speaking a substitutional gift," but one which made "an addition to the class of persons taking under the original gift by reference to the issue of . . . certain hypothetical cases": per Cozens-Hardy, M.R., *ib.*, at p. 6.

In *Gorringe* v. *Mahlstedt*, 1907, A.C. 225, the proviso was to the effect that "in case any one or more of my children shall pre-decease me, etc." The testator had in another part of his will given legacies to the children of his "deceased son." The House of Lords in restoring the decision of Joyce, J., held that, taking the will as a whole, the testator's intention was clear; it was that the children of the son who was dead at the date of the will should *not* be entitled under the proviso. "Unless there is something in the context of the will" said Lord Halsbury (*ib.*, at p. 228) "which prevents the ordinary and proper construction of the words in their natural meaning, I believe that every court ought to adhere to that meaning and give effect to it."

Younger, J., in *Re Brown*, 1917, 2 Ch. 232, followed *Gorringe* v. *Mahlstedt*, *supra*, and distinguished *Re Williams*, *supra*. The testator gave a legacy to each of the children of a deceased

daughter and then disposed of his residue to all his children, providing, however, that if any child "shall die," etc. The learned judge thought there was nothing in the will which enabled the court to depart from the natural and first meaning of the words used. Accordingly, he gave them their natural literal construction, with the result that the children of the deceased daughter were excluded.

The conclusions which we reach on a study of the above authorities are as follows:—

Where there is a strictly substitutional gift, words of futurity contained therein will generally exclude, say, the issue of a child deceased at the date of the will; but if there is a declaration enlarging the class taking the original gift there will be no such exclusion.

The will must be looked at as a whole. Unless it contains some indication that the testator intended exclusion, mere user of words of futurity is not sufficient to cause exclusion.

In all the above cases the words used are definitely words of futurity. What our correspondent presumably implies in his suggestion is that the use of the present tense, or aorist, amounts in the circumstances to the use of words of futurity. Our submission, however, is that if the court "must" [in the absence of a contrary intention by the testator] construe "shall die" as equivalent to "shall be dead"; then *a priori* it must construe "dies" as "shall be dead" or "shall have died." In other words, "dies" means "dies before or after the date of my will." The use of the present tense or aorist seems definitely to indicate a neutral attitude as regards time, and clearly to operate in favour of inclusion in the absence of a contrary intention in the will.

Landlord and Tenant Notebook.

Effect of Closing Order in Respect of Premises within Rent Acts.

Landlords are sometimes placed in a position of difficulty when they are ordered by a local authority to demolish or effect extensive structural repairs of buildings, where the premises in question are in the occupation of a tenant who, under the protection of Rent Restriction Acts, flatly refuses to leave the premises.

There are two cases in this connexion which it may be convenient to bear in mind, viz., *Blake* v. *Smith*, 1921, 2 K.B. 685, and *Parry* v. *Harding*, 1925, 1 K.B. 111.

In the former case a closing order had been made under s. 17 (2) of the Housing Act, 1909, the Housing Act then in force, against the occupying tenant of premises within the Rent Acts. On the tenant failing to vacate, the local authority obtained a warrant of ejectment against him, and he was ultimately evicted. The owner thereupon expended a large sum of money on the execution of the necessary repairs and alterations to the house. Before these repairs were completed the late tenant somehow or other gained entrance to the house and retook possession of it. On the owner bringing an action of ejectment against him the defence was raised that the tenancy continued throughout, and had not been determined by the closing order or by the service of the notice thereof on the defendant or by the eviction of the defendant thereunder, but the court held otherwise, being of opinion that the defendant's tenancy was determined by the closing order and that he had no legal right to retake possession of the premises, and that in doing so he was a trespasser.

In connexion with the above case it is important to note the provisions of s. 35 of the Housing Act, 1919. That section provided that: "Nothing in the Increase of Rent and Mortgage (War Restrictions) Act, 1915, or in the enactments amending that Act, shall be deemed to affect the provisions of s. 17 of the Housing etc. Act, 1909, or to prevent a local authority from obtaining possession of any house the possession of which is required by them for the purpose of exercising their powers under the Housing Acts or under any scheme made under those Acts." This provision apparently is still in force, and was slightly amended by s. 16 of Sched. 2 of the Housing Act, 1923, the amendment consisting of the substitution in the above section of the "Rent Act of 1920" for "the Act of 1915."

The effect of the section was considered in the subsequent case of *Parry* v. *Harding*, 1925, 1 K.B. 111. In that case the local authority sought to recover possession of a small cottage let by the authority to the defendant, in execution of certain powers under an improvement scheme, and the question for the consideration of the Divisional Court in the case stated by the justices was whether the local authority were entitled as of right to an order for possession, without providing alternative accommodation. After a consideration of the various statutory enactments having a bearing on the point, the court held that the authority were entitled to an order for possession and were under no obligation to provide alternative accommodation. The Divisional Court, however, pointed out that a distinction was to be drawn between cases in which the authority were exercising their powers under the Housing Acts and cases in which they were exercising their powers under other Acts. Thus Avory, J., said in his judgment (*ib.*, at p. 118): "It certainly appears that there is in the Housing Acts a special provision applicable to the one case when the local authority are exercising their powers under those Acts, and the result is if they are exercising their powers under the Housing Acts there is no obligation to provide alternative accommodation, but if they are merely widening a road and doing exactly the same thing under another Act of Parliament they are bound to provide alternative accommodation."

Where, therefore, a landlord has been served with a notice to demolish or execute structural alterations to the premises, his best course, if the tenant refuses to vacate, would be to get the local authority to obtain an order for possession against the tenant under the Housing Act.

Our County Court Letter.

IMITATION OF PROCESS OF THE COURT.

The effect of the following document was considered in the recent case of *Vines* v. *Browne* at Malvern County Court:

"Final Notice, before proceeding in the County Court for recovery of debt, I hereby give you notice that unless the sum, or part, of £3 10s. 4d. due by you to H. B. Vines, P.O., Poolbrook, is paid on or before Saturday, the 21st day of April, 1928, proceedings will be taken against you without further delay. Trusting you will think it advisable to pay the amount and thereby avoid the expense to which you will otherwise be liable.—I am, yours respectfully, W. Hodges. Dated the 16th day of April, 1928."

His Honour Judge Roope-Reeve, K.C., having been informed that "W. Hodges" was no one in particular, remarked that the fact of a fictitious name having been appended to a notice of this sort appeared most strongly to point to an intention to induce the debtor to believe that the notice was something that it was not. If it came before the court again he would have to consider whether it might be necessary in certain circumstances to put the machinery of the criminal law into force. His Honour explained that under a section of the County Courts Act, 1888, anything approaching the forging of proceedings was a felony, and it behoved creditors, tradesmen and others dealing with debtors to be careful not to issue any form of notice that might be mistaken for process of the court.

The above reference was to s. 180, as amended by the County Courts Act, 1924, s. 9 (3), which provides that every person who shall . . . deliver or cause to be delivered to any

person any paper falsely purporting to be a copy of any . . . process of the court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process or authority of the said court, shall be guilty of felony. No punishment is specified, but the Forgery Act, 1913, s. 3 (*a*), provides that penal servitude not exceeding seven years may be imposed for forgery of any official document of or belonging to any court of justice. In the absence of statutory definition, the meaning of the word " process " must be ascertained from decided cases. In *R.* v. *Evans*, 26 L.J. M.C. 92, the defendant had sent to one of his debtors a letter not in any way resembling county court process, but headed with the royal arms and the letters " V.R.", and threatening proceedings " in pursuance of the statute, 9 & 10 Vict. c. 25, etc." The letter purported to be signed by a clerk of the Welshpool County Court, and the defendant was convicted at quarter sessions and sentenced to two months' hard labour, the conviction being upheld by the Court for Crown Cases Reserved. Lord Campbell, C.J., stated that the mere sending of the letter would not alone have been sufficient, but the defendant had afterwards stated that he had instructed the court to send the letter, and had also pretended that 1s. 3d. was due for county court expenses, thereby inducing the debtor to believe that such further sum was due under process of the court. In *R.* v. *Richmond*, 28 L.J. M.C. 188, the prisoner had obtained a præcipe for a summons, and had inserted his own name as plaintiff and his debtor's name as defendant, together with a claim for 9s. 6d. for goods sold. The form was signed, without authority, in the name of the Registrar of Taunton County Court, and on the back was a statement that in default of payment an execution warrant would be issued immediately. The prisoner posted this document and made no further pretence, but in spite of the observation of Lord Campbell, *supra*, the conviction was upheld. The court for Crown Cases Reserved held that it was not necessary that there should be any actual process which the pretended process resembled.

A decision on the other side of the line is that in *R.* v. *Castle*, 27 L.J. M.C. 70. The accused had sent to a debtor a document headed " In the County Court of Leicestershire, holden at Melton Mowbray," with his own name as plaintiff and his debtor's as defendant, followed by an ordinary notice to produce, and the words " By the plaintiff " at the end. In the margin the amount due was set out, but the conviction (for delivering a paper falsely purporting to be a copy of process) was quashed—on the ground that the document did not purport to be a summons to a witness, but a notice from one party in an imaginary suit to another. Chief Justice Cockburn pointed out that the document did not purport to be anything in the shape of process of the court. The case of *R.* v. *Evans*, *supra*, was distinguished on the ground that that conviction was for acting under false colour or pretence of process, under another branch of the section, both parts of which are reproduced in the present Act.

Practice Notes.

" PRIVATE STREET WORKS."

At the last Liverpool County Quarter Sessions the test appeal was heard of the Formby Urban District Council against an order of the Formby Petty Sessions under s. 8 (1) of the Private Street Works Act, 1892, quashing a resolution of the council to make up a " street " called Argomeols-road. The " street " being an unsurfaced cul-de-sac, upon 65 per cent. of which buildings had already been erected, the council felt that development in the district had so far advanced that it was incumbent on them to make up the same, and accordingly they passed the necessary resolution in May. No objection was made by the London Midland and Scottish Railway Company, owners of a piece of land intended for the site of a bridge, nor by the owners of the undeveloped Weld Blundell Estates, but opposition was raised by other frontagers on the ground that the work was unnecessary, *and the provisional cost excessive*. The frontagers' objections were upheld at petty sessions on 11th July, leaving the council with power to sewer the houses in the road, but not the road itself. It transpired during the proceedings that in 1923 the Weld Blundell Estates proposed to make Argomeols-road 40 feet wide with a carriageway of 24 feet, but the council decided, on the ground of economy, to reduce the carriageway to 20 feet, leaving a grass verge and footpath on either side, 5 feet wide. For the council the city engineer of Liverpool gave evidence that the proposal of the appellants diminished the cost of the work, while retaining the specified stability, and the respondents called evidence to show that the work was unreasonable at present, but that, even if the contrary was held, the estimate of £4 8s. per yard was excessive, in view of the locality and the probable traffic. The chairman of the bench announced that the appeal of the council against the order of petty sessions would be allowed, and a new order made approving their resolution.

GOVERNMENT DEPARTMENTS AND COURTS OF JUSTICE.

The above sometimes take divergent views of the same set of facts, as shown by a recent case at Sheffield. The Ministry of Labour had disallowed the dependant's benefit of an insured contributor on the ground that his wife was engaged in an occupation ordinarily carried on for profit, the contributor having previously signed the usual documents containing a statement that his wife was not working. It was later discovered that there was a card in the window of the defendant's house, setting out a list of charges for the various methods of hairdressing, and an official of the Ministry ascertained that a room was equipped for carrying on the business. Besides the cancellation of the weekly allowance of 7s. in respect of the wife, proceedings were therefore instituted against the defendant for making a false statement contrary to the Unemployment Insurance Act, 1920, s. 22 (1), which is an offence punishable by fine or imprisonment not exceeding three months. An official giving evidence for the prosecution admitted that he did not see any customer on the premises, though the wife appeared to be waiting for them and everything appertaining to a hairdressing establishment was present. It was argued for the defendant that there was no evidence that any money was being earned, as the prosecution had only been able to point to a card, which was not printed, and also to certain equipment which might have been used, though no one was seen to enter. The chairman (Mr. J. H. Freeborough) stated that the evidence was sufficient to establish the fact that the business was carried on by somebody, but as there was no evidence that it was carried on by the defendant's wife or that she earned any money thereby, the summons would be dismissed. It transpired during the case that if the wife had been earning only a 1s. a week the defendant would have been disallowed the 7s. dependant's benefit.

" WELL OF LONELINESS."

Sir Chartres Biron sat specially in the second court at Bow-street Police Court on Tuesday for the purpose of hearing summonses arising out of the seizure by the police of copies of Miss Radclyffe Hall's book, " Well of Loneliness." Messrs. Jonathan Cape Limited, of Bedford-square, W.C., and Mr. Leopold B. Hill, of Great Russell-street, W.C., a representative of the Pegasus Press, of Rue Boulard, Paris, were summoned to show cause why the seized copies should not be destroyed on the ground that they were of an obscene character. The book was described in the summonses as purporting to be published by the Pegasus Press or by Messrs. Jonathan Cape Limited. Chief Inspector Prothero, of Scotland Yard, said, in reply to the magistrate, that the defendants were not present or represented. It was stated that both sides had agreed to the hearing being adjourned until 9th November, and Sir Chartres Biron adjourned the summonses accordingly, without hearing any evidence.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered gratis. All questions should be typewritten (in duplicate), addressed to—The Assistant Editor, 29, Breams Buildings, E.C.4, and should contain the name and address of the subscriber. In matters of urgency, answers will be forwarded by post if a stamped addressed envelope is enclosed. No responsibility is accepted for the accuracy or otherwise of the replies given.

Allocation of Tax Repayment.

Q. 1460. B, the wife of A, died in March last, and her estate consisted largely of stocks and shares from the dividends of which shares the income tax was deducted in the usual manner. A, the husband, has since the death, made a claim for return of tax in respect of his own income (which was only small), and in respect of his late wife's income, and the overpaid tax has been refunded to him. Will you please advise us whether a proportion of the tax which has been repaid to the husband, A, should form part and be included in the estate of B, and divided among the beneficiaries accordingly, or whether the whole of the repaid tax belongs to the husband absolutely? We quite appreciate that, for income tax purposes only, the payment is properly made to the husband, but does this affect the equitable division of the repaid tax as between the husband and the beneficiaries?

A. The proportion of tax recovered by the husband in respect of the estate of B should form part and be included in the estate of B and divided among the beneficiaries accordingly.

Bastardy—Enforcing Order—Mother Abroad—Child Alive or Dead?—Onus of Proof.

Q. 1461. Some time ago an order was made on a client of mine as the putative father of an illegitimate child to contribute towards its maintenance through the collecting officer. At a later date the mother of the child emigrated to Canada with her family, taking the child with her—she and the child are still in Canada. The collecting officer has issued a warrant (which stands adjourned, and the respondent is released on bail) in respect of arrears which have accrued since her departure. I agree that the collecting officer is within his rights in doing this. The question arises—

(1) Am I, as solicitor for the putative father, entitled to insist on "strict proof," that the child is still alive?

I raised this point in court, but the magistrates' clerk stated that if I raised the point it would be necessary for me to prove it, and satisfy the court that the child was dead, and therein I think he is misdirecting himself and the magistrates.

(2) It is assumed that a letter from the mother of the child or any other person stating that it was still alive would not be strict proof of the fact.

A. (1) The rule is stated on p. 440 of "Halsbury's Laws of England," Vol. XIII, under "continuance of facts": "An inference of fact may legitimately be drawn that a person alive and in health at a certain time was alive a short time or even several years later." The position, therefore, seems to be that if the collecting officer shows that the child was alive and healthy before the woman left for Canada, the onus is shifted to the father to prove the child's death.

(2) It would not.

Transfer of Parish Property to Diocesan Board of Finance where no Existing Trusts Declared—Stamp Duty.

Q. 1462. A parish hall was erected in 1911 by subscriptions of the parishioners, on land also purchased by subscription, and conveyed to five persons, as joint tenants, without any trusts being declared. It is now desired to vest the premises in the Diocesan Board of Finance, as custodian trustees, without involving the payment of a considerable sum in *ad valorem* duty. Such duty would presumably be payable if a conveyance or settlement was made by the trustees without disclosing that the property was held upon trust. On the other hand, to recite that the property was held upon trust would, it is feared, invalidate the original conveyance, which was not attested by two witnesses, or enrolled. Could the transfer to the diocesan board be effected by the trustees executing a deed poll declaring trusts, and a subsequent deed whereby they retired from the trust and appointed the diocesan board new trustees, each deed requiring a 10s. stamp only?

A. We express the opinion that even if the suggested procedure would properly obviate the payment of *ad valorem* stamp duty (which we are inclined to doubt) the declaration of trust would be as dangerous as a recital. In this connexion see Mortmain and Charitable Uses Act, 1888, Pt. II, s. 4 (9). If the fiction that the property was conveyed to the five individuals beneficially is preserved, those five persons now hold the property upon trust for sale in like manner as if they were tenants in common, but not so as to sever their (fictitious) joint tenancy in equity; that is to say, they hold upon trust for sale (L.P.A., 1925, s. 36 (1)). We suggest that the board, which is, no doubt, a "trust corporation," be appointed trustee for sale in the place of the five individuals. This will vest the property in the diocesan board with the expenditure of a mere 10s. in stamp duty. We are unable to suggest a method of a formal declaration of trust which will not be likely to invalidate the conveyance of 1911, and we think that it might be prudent in lieu of the above suggestion to get the vendor of 1911 to execute a deed of confirmation in favour of the five individuals, after which they could safely execute a declaration of trust, enrol the declaration, and retire in favour of the board. This would presumably involve an outlay of 30s. in stamp duty.

Will—Latent Ambiguity—Extrinsic Evidence.

Q. 1463. By the will of X, who died last June, the use of a certain house was bequeathed to his housekeeper, A, during her life, rent free. A had no use for the house, and signed a release to the trustees, B and C, on a 6d. stamp, in consideration of £20, and agreed, if and when required, to join in and execute any deed they might require for further or otherwise vesting the property in them or any purchaser. The house formed a part of certain property belonging to the testator, which included a close of land in the occupation of B, and another cottage, and the testator gave B (who also occupied a farm and other land of the testator), an option of purchasing "his farm" at a valuation, *notwithstanding his being a trustee*. In the conveyance to the testator of the farm in B's occupation is also included three cottages, besides the homestead and land, and these cottages are let to various people and are not included in B's tenancy, although they are in the title deeds relating to B's farm. No vesting deed or assent has been executed by the trustees or executors. B wishes to exercise his option and proposes to purchase the farm and the three cottages, and the close of land and the two cottages. Will you kindly say whether in your opinion the option to purchase will include the five cottages; whether B and C can convey all the property included in X's title deeds to B; and whether A should be a party to and join in the conveyance to B?

A. We are of opinion that on the principle laid down in *Doe d. Simon Hiscocks* v. *John Hiscocks*, Tudor L.C. Conv. 4th ed., p. 489, extrinsic evidence is in this case admissible to resolve the latent ambiguity in the scope of the option and to explain what the testator meant by "his farm." We have not the will before us and it is not clear from the question

whether "his farm" meant B's farm (that is to say, the farm of which B was X's tenant), or whether it meant X's farm. If the former, we are inclined to think that the option is restricted to so much as was in B's occupation as a farm under an entire tenancy agreement at the date of the will, unless the close of land was then or subsequently let to B as an express addition to the farm. If the latter, we are disposed to consider that only the whole originally comprised in the conveyance of the farm to X is covered by the option thus excluding the close, the other cottage, and the cottage given for the use of A for life. If it is possible we recommend that all parties beneficially interested in the proceeds of sale should, if all *sui juris*, be joined in the conveyance to agree that the option had the desired scope. We do not recommend that, without the approval of all parties concerned, B should attempt to acquire the cottage given for the use of the housekeeper for life, but if this was done the concurrence of A would not be necessary (as she has not the legal estate), nor need her release be put upon the title if the conveyance is made by the personal representatives of X, nor need she be joined as if beneficially interested in the proceeds to agree the scope of the option. We do not consider that the acceptance of the £20 can in any way operate as an assent affecting the legal estate as distinct from the equitable interest.

Separation Deed—Covenant to pay Annual Sum free of Income Tax—Deduction of Tax.

Q. 1464. A and B (husband and wife) entered into a deed of separation whereby A covenanted to pay to B an annual sum of £x free of income tax. Can A deduct income tax from the annual sum covenanted to be paid in spite of the provision that it is to be "free of income tax."? Kindly quote authorities if answer is in the affirmative.

A. Yes. Every agreement for payment of interest, rent or other annual payment in full without allowing deduction of income tax is void: see Income Tax Act, 1918. All schedules, Rules, r. 23, sub-s. (2).

Death Duties.

Q. 1465. (1) A carried on business as an hotel proprietor, the licence being in his name, and B his wife assisted him in the business. A opened a banking account in the joint names of A and B, either of them being able to sign cheques, thus enabling B to sign cheques in payment of accounts during A's absence. Out of the profits of the business A purchased two freehold properties in the joint names of A and B. B has recently died and her interest therefore in the two properties passes to A as survivor. The Estate Duty Office now claim payment of estate duty in respect of one-half of the two properties under s. 2 (1) (*a*) of the Finance Act, 1894. Can this claim be sustained, having regard to the fact that the profits of the business, out of which the properties were purchased, belonged to A, and B's contribution must have been limited to such proportion thereof (if any) to which she might claim to be entitled as having assisted A in the business?

(2) The mother of B purchased a freehold property in the joint names of A and B for the benefit of the children of A and B, who were infants. On B's death does any claim for duty arise in respect of one-half of this property under s. 2 (1) (*a*) of the Finance Act, 1894, on the ground that A and B are legally and equitably entitled as joint tenants, the trust for the children not having been expressed in writing?

(3) If any claim for duty arises under (1) or (2), is B's free estate aggregable with the joint properties?

A. (1) It is simply and solely a question of what proportion of the purchase money was provided by B. If she found, say, a quarter of it, then a quarter share of the property belonged to B, and duty would only be payable on such share on her death. But unequal shares are rather inconsistent with a "joint tenancy," and point to a "tenancy in common." Why does the question treat the ownership as being one of joint tenancy?

(2) No duty is payable on the death of a person in respect of property held by him as trustee. It should be contended that A and B were trustees for the children. Is there not correspondence or other evidence to prove that the mother gave no beneficial interest to A and B? If there is no written evidence of the trust the Estate Duty Office may rely upon s. 53 of the Law of Property Act, 1925 (replacing s. 7 of the Statute of Frauds) which requires trusts of land to be declared in writing. Did A or B in fact benefit personally at all from the occupation or rent of the land? Who paid the income tax on it? Did A or B make any claim at any time to return of tax in respect of it?

(3) Where the free estate does not exceed £1,000 net, it is to be treated as "an estate by itself." In practice, the Estate Duty Office treats property held on "joint tenancy" as settled, so that the share covered by question (1) will not be aggregated with B's other property if the latter does not exceed £1,000 in value. For the same reason, if it cannot be established that the property covered by question (2) was held upon trust for the children, it should be contended that the property was settled on A and B for their joint lives, and on the death of the survivor of them upon trust for the children. This would make the property settled property, and exempt from aggregation with B's free estate if the latter is under £1,000 net. It would also exempt the property from again bearing duty on A's death, when that occurs, under s. 14, Finance Act, 1924.

Husband and Wife—Jurisdiction of Justices for Neglect to Maintain—Effect of Agreement.

Q. 1466. By a separation agreement dated the 31st December, 1926, A agreed (*inter alia*) in consideration of certain payments (based on a percentage of earnings) to be made under the terms of an agreement by B, her husband, that she would not take any steps or proceedings to compel him to cohabit with her or to obtain any allowance from him for maintenance, alimony or otherwise beyond the allowance therein provided for. Subsequently A took out a summons in the police court for a maintenance order on the ground of wilful neglect to provide reasonable maintenance. Some arrears were at that time due under the original agreement. Prior to the hearing of the summons B agreed to adhere to the agreement and to pay off the arrears by instalments, and the hearing of the summons was adjourned *sine die*. Since this date B has paid up all arrears and has regularly paid a weekly sum to A for maintenance but not actually the percentage agreed. Not being satisfied that the weekly payments now being made amount to the percentage of earnings agreed to be paid, A has had a date fixed for the hearing of her complaint before the justices. Is A entitled to an order by the justices? Attention is called to the decision of *Diggins* v. *Diggins*, 1926, 96 L.J.P. 14.

A. The case appears to be covered by the authority of *Diggins* v. *Diggins*, *supra*, and *McCreaney* v. *McCreaney*, 1928, 92 J.P.N. 62. In the latter case, the wife had agreed to accept 17*s.* 6d. a week, and to take no steps to compel her husband to allow her any other maintenance. He failed to keep up the payments, and she summoned him before the justices, who dismissed the case on the ground that their jurisdiction was ousted by the covenant not to compel him to pay any other than the 17*s.* 6d. a week, and that the proper remedy was to sue in the county court on the agreement.

The Divisional Court held on appeal that the case must go back to be determined on its merits. If the justices were to find that the husband had failed to provide the wife with the maintenance contracted for by the agreement, they had jurisdiction to make an order for weekly payments to the wife at any rate up to the amount of 17*s.* 6d. a week.

In the present instance, if A can show that B has failed to pay what he agreed to pay, and that his neglect to maintain her according to the terms of the deed has been wilful, then the justices have, in our opinion, jurisdiction to make an

order, at all events (within the statutory limits) up to the amount that would be payable under the agreement at the time when she made her complaint.

Rates due from a Deceased Person.

Q. 1467. A person died 9th November, 1926, leaving property on which the poor and general rates due 1st October previous to death were unpaid. In the affidavit the whole of the rates due for the half-year to the following March were included as a liability of the estate. It is asked if this is the correct method of dealing with the rates, or should the proportion from 1st October to 9th November only have been shown as a liability, leaving the remainder as a charge against income.

A. The proportion of the rates from 1st October to 9th November, 1926, only should have been shown as a liability in the affidavit.

Legal Parables.

XIV.

The Justice who was also a Doctor.

It happened once that a solicitor instructed for the defence in a nasty case involving allegations of drunkenness, assault, and a few other things, found the bench to consist of two justices, one of whom, the chairman, was a medical man, long retired from a small practice, and rather deaf.

The case for the prosecution was pretty deadly, and the solicitor feared the worst for his client. As the last witness, the prosecution put into the box a young doctor whose knowledge of English seemed imperfect, since he talked Latin and Greek almost exclusively. The solicitor, who understood little or none of the evidence, asked very few questions, and then sat down, observing dramatically that in the presence of such a bench it was hardly necessary to cross-examine upon such testimony.

He then addressed the magistrates. He counted himself fortunate, he said, that such a case came for decision before a bench whose chairman had once adorned the most honourable of all professions. At first, he confessed, he had thought his client had a considerable case to answer; but the medical evidence had, in his respectful submission, changed the whole aspect of the case by its utter inconsistency with the story told by the witnesses. It was unnecessary to go into detail. the chairman himself had heard and would appreciate it. (This was quite untrue, but the chairman nodded approvingly.) But he would just mention one point as an example. (Here he raised his voice so that even the chairman must hear him.) The young practitioner who gave medical testimony spoke of the prisoner as suffering from "epistaxis." (This was the only word the solicitor had managed to catch with accuracy.) Epistaxis forsooth! and yet charged with being drunk! As if that fell disease were not enough to account for everything! It was indeed a mercy that the bench would see, without his labouring the point, how utterly ridiculous the whole case had become from that moment. And observing that, he left his case with confidence to the good sense and, if he might say so, the profound medical knowledge and wide experience of the bench, the solicitor sat down.

The chairman looked knowing, whispered a few words to his colleague, and announced that the prisoner must, of course, be discharged, though he certainly ought to place himself in competent hands for treatment.

So the solicitor went back to his office; and, just to satisfy his own curiosity, consulted a medical dictionary to see what on earth "epistaxis" meant. "M."

Mr. E. V. Huxtable, solicitor, 96, Cheapside, E.C.2, has been elected Master of the Glovers Company. Mr. Huxtable was admitted in 1902.

Reviews.

The Solicitors' Diary, Almanac and Legal Directory, 1929. Eighty-fourth year of publication. Edited by Robert Carter, Solicitor. Waterlow & Sons, Ltd., London Wall, E.C.2, and Waterlow House, Birchin-lane, E.C.3. With or without money columns. Cloth gilt, 8s. net. In half-bound law calf, 10s., 12s. 6d., and 15s. net.

Besides an excellent diary, this useful annual contains some reliable information as to oaths in the Supreme Court, the Solicitors' Remuneration Act and Orders, Treatises on the Stamp Act and on Estate Succession and Legacy Duties, Suggestions on Registering Deeds, etc., at Public Offices, the Solicitors Acts, Precedents of Costs, an alphabetical Index to the Public Statutes from the accession of Queen Victoria down to the present time, together with a complete list of the names *and addresses* of all London and country solicitors (and their London agents), with particulars of the public appointments held by them, corrected and brought up to date. In short it contains a mine of useful information indispensable to the busy practitioner. H.

Books Received.

City of London Police. The Police Committee submitting the Annual Report of the Commissioner of the City Police for the year 1927.

Autolycus or the Future for Miscreant Youth. R. G. Gordon, M.D., D.Sc., F.R.C.P., Editor. pp. 94. 1928. London: Kegan Paul, Trench, Trubner & Co. Ltd., New York. E. P. Dutton. 2s. 6d. net.

The Law in Relation to Aircraft. L. A. Wingfield, M.C., D.F.C., and R. Brabant Sparkes, M.C., with a Foreword by Air Vice-Marshal Sir Sefton Branckner, K.C.B., A.F.C., Director of Civil Aviation, Air Ministry. pp. vii and 304 (with Index). 1928. Longmans Green & Co. 12s. 6d. net.

How to become a Solicitor. Third Edition. Gibson and Weldon, Law Tutors. 76 pp. 1928. The Law Notes Publishing Offices, 25-26, Chancery-lane, W.C.2. 4s. 6d. net.

The Mandate for Palestine. A contribution to the Theory and Practice of International Mandates. J. Stoyannosky, Docteur en Droit (Paris) LL.D. (Lond). pp. ix and 399 (with Index). Longmans Green & Co. 25s. net.

Central Banks. Sir Ernest Harvey, K.B.E. (Comptroller of the Bank of England). An Address delivered before the Victorian Branch of the Economic Society of Australia, with an Introduction by Sir George Paish.

The Juridical Review. Vol. XL. No. 3. September, 1928. W. Green & Son, Ltd. 5s. net.

The Journal of Comparative Legislation and International Law. Third Series. Vol. X, Pt. III. August, 1928. Issued to Subscribers only.

The Law Quarterly Review. Vol. XLIV. No. 176. October, 1928. Stevens & Sons, Ltd. 119 and 120, Chancery-lane, W.C.2. 6s. net.

The Bombay Law Journal. Vol. VI. No. 4. 1st September, 1928. G. M. Pandya. The Manek Printing Press; Anand Nivas, Tribhuvan-road, Bombay 4. R.1.8.0.

The Legal System of England. J. E. G. Montmorency, M.A., LL.B., Quasi-Professor of Comparative Law in The University of London. Ernest Benn, Ltd. 6d. net.

Tax Cases. Vol. XIII. Parts III and IV (reported under the direction of the Board of Inland Revenue). 1928. H.M. Stationery Office. 1s. net.

The Professional Classes Aid Council, Annual Report, 1927-1928. 251, Brompton-road, S.W.3.

Gibson's Guide to Stephen's Commentaries on the Laws of England. Seventeenth Edition (constituting a guide to the Nineteenth Edition of the Commentaries). ARTHUR WELDON, H. GIBSON-RIVINGTON, M.A. (Oxon.), and A. CLIFFORD FOUNTAINE, solicitors. 1928. Demy 8vo. pp. 538. London: The Law Notes Publishing Offices, 25-26, Chancery Lane, W.C.2. 25s. net.

Cases in Constitutional Law. D. L. KEIR, M.A., Fellow of University College, Oxford, and F. H. LAWSON, M.A., Barrister-at-Law, and Fellow of Merton College, Oxford. 1928. Demy 8vo. pp. xxvi and 479 (with Index). Oxford: Clarendon Press. London: Humphrey Milford. 25s. net.

Correspondence.

Divorce for persons professing the Jewish faith.

Sir,—I am directed by the Board of Deputies of British Jews, which is the representative body of the Jews of the British Empire, to bring the following points to the notice of counsel and solicitors who conduct divorce suits on behalf of persons professing the Jewish faith:—

(1) Civil divorce in the courts of the country of domicile is essential before a religious divorce, according to traditional Jewish law, can be granted, and orthodox Rabbis will not perform the religious ceremony of *re-marriage* unless both the civil and religious divorces have been obtained.

(2) Some women may have difficulty in obtaining from their civilly-divorced husbands the religious divorce ("Get") and will therefore suffer hardship.

(3) The notice of solicitors is directed to these facts so that they may do their utmost to assist the women, whether petitioners or respondents, to obtain the Jewish "Bill of Divorce" at the earliest possible moment.

(4) If any difficulty arises in securing the "Get," advice should be immediately sought from the clerk to the "Beth Din" (Court of the Chief Rabbi), Mulberry Street, Commercial-road, E.1, or the Secretary, The Board of Deputies of British Jews, 23, Finsbury-square, E.C.2.

CHARLES H. L. EMANUEL,
Solicitor to the Board of Deputies of British Jews.
23, Finsbury Square, E.C.2.
23rd October.

Qualifying Test for Directors.

Sir,—I read with very great interest your article in the number of 27th October, but Mr. Baldwin is the last person who should question the qualifications of directors. A physician should heal himself.

When the *City Equitable Case* was being considered the Cabinet stated that further legislation was necessary, and that there was not time for such legislation. Further legislation was *not* necessary, and all that was necessary was the exercise of a little common sense.

I went to the meeting of London Assurance and questioned the auditors' certificate, and told the chairman that I required a full certificate stating categorically that the cash had been examined, that the securities had been produced to the auditors, and that the securities were all in proper custody. The chairman told me it was humiliating that a question of that kind should be asked at a meeting of London Assurance, but he read me the detailed certificate given by the auditors of the company to the board of directors.

The certificate of the auditors to the directors was exhaustive and satisfactory, as I expected, and I then demanded that the directors should append such certificate to their balance sheet in place of the anæmic certificate which satisfies the Companies Act of 1908. I had support from the shareholders, and when I got back to my office I wrote a letter to *The Times* reporting the incident, which letter was largely reproduced in the financial section of *The Times* on the following day. I pointed out in that letter that if the big companies had insisted on a stringent certificate, Mr. Bevan, no matter how masterful and pious he was, would have had to supply that certificate, or his company would have gone under.

Being a shareholder in a considerable number of insurance companies I have succeeded in making them, one after the other, use a form of certificate satisfactory to myself.

I did not trouble The Law Society nor any other body for their assistance, as I have learned during the fifty-five years I have been in the profession if I want anything done I must do it myself.

London, E.C.2. E. T. HARGRAVES.
30th October.

[Mr. Hargraves' point that shareholders can protect themselves on existing legislation, if they take the trouble to do so, was also stressed by our contributor. They are, however, entitled to certain safeguards against fraud, and s. 78 of the new Act restores one of which they had been deprived by a vicious "common form" article.—ED., *Sol. J.*]

Bastardisation of Issue.

Sir,—I shall be much obliged if you will kindly give me the name of the case referred to under the above heading in "Current Topics" in THE SOLICITORS' JOURNAL of the 6th inst.

If the case has been reported, will you kindly favour me with a reference to it? As I am concerned in a similar matter any further information with reference to it will be much appreciated.

Manchester, "SUBSCRIBER."
28th October.

[The above paragraph refers to an unreported case and gives the fullest particulars permissible on a topic of professional interest. No further details can be obtained in view of the recent reminder to the profession that briefs are the property of the client, and must not be lent to law reporters.—YOUR CONTRIBUTOR.]

NOTES OF CASES.

House of Lords.

Eastmans Ltd. *v.* **Shaw.** 22nd October.

INCOME TAX—OPENING NEW SHOPS—EXPENDITURE OF A CAPITAL NATURE—WHETHER TO BE DEDUCTED IN ASCERTAINING PROFITS.

This was an appeal from the appellant company, Eastmans Ltd., against assessments to income tax and corporation profits tax in respect of their profits from the trade or business of butchers, and the question was whether in ascertaining profits the difference between the expenditure incurred in fitting up new shops opened in the course of a year and the receipts from sales of fixtures and fittings of shops closed could be deducted as an expense incurred on revenue account in carrying on the trade, or whether it was expenditure for a capital purpose and not deductible in ascertaining the profits. The appellants had a large number of shops which they closed and opened according to their business, viewed as a whole, and it was their custom when closing a shop to dispose of the fittings and when opening a new one to acquire fresh fixtures and fittings for that shop. It was contended by the Crown that the deduction claimed was not authorised by s. 53 (2) (*e*) of the Finance Act, 1920, or by r. 3 (*d*) of the Rules applicable to Cases I and II of Sched. D of the Income Tax Act, 1918. The Commissioners were of opinion that the expenditure was of a capital nature and not allowable as an expense of running the business. Rowlatt, J., affirmed that decision and his judgment was affirmed by the Court of Appeal.

The LORD CHANCELLOR said the appeal failed. In his opinion the courts below and the Commissioners were right in saying that the expenditure was a capital expenditure and could not be allowed. It was conceded by the appellants that in the ordinary case of multiple shops or of a bank having branches that would be a capital expenditure, but they sought to distinguish this case by saying that it was part of the policy of the appellants to open and close shops according to the requirements of their business viewed as a whole. In his opinion that made no difference. He thought the Commissioners were right in finding that the expense of fitting up new shops was an expense incurred anterior to the carrying on of the trade and was not allowable as an expense of running the business. The appeal should be dismissed, and he moved accordingly.

Lords SUMNER, BUCKMASTER, CARSON and WARRINGTON concurred.

COUNSEL: *Needham*, K.C., and *J. S. Scrimgeour; the Attorney-General* (Sir Thomas Inskip, K.C.) and *R. P. Hills*.

SOLICITORS: *Charles H. Wright; Solicitor of Inland Revenue*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Letbe *v.* Letbe and Whitehead.

Lord Merrivale, P. 15th October.

DIVORCE—CONFESSION OF ADULTERY—MENTAL INSTABILITY OF PETITIONER—SEPARATION BY AGREEMENT RECITING CONFESSION—LAPSE OF TEN YEARS BEFORE PROCEEDINGS—CONDONATION—DECREE CONDITIONAL ON PROVISION FOR GUILTY WIFE.

In this undefended divorce case the court had to consider whether the entry by the petitioner into an agreement for separation with the respondent after confession of adultery by her, coupled with delay in seeking his remedy, amounted to condonation.

Lord MERRIVALE, P., in the course of his judgment, said:—The case is one of great difficulty. In 1918 the respondent confessed to her husband that she had been engaged in an adulterous intimacy with the co-respondent, Whitehead, and I am satisfied that the disclosure shocked the petitioner very much and made him what has been described as almost distracted and frantic. The petitioner is not a man of robust health, and although, when in a state of extreme indignation and resentment, he consulted a solicitor as to the situation, he took so violent a view of the circumstances that his solicitor decided that he could not reasonably take action in the direction desired by the husband. The solicitor had to deal with a man who was "beside" himself and a woman who had admitted her guilt, and an agreement was entered into by which the parties should live apart for six months, the wife to receive a weekly allowance, and at the end of six months the whole circumstances were to be reconsidered. There was no co-habitation after the confession. The co-respondent had admitted the charge of adultery, and his life was threatened by the petitioner who actually attacked him. . . . I am satisfied that the agreement did not constitute condonation, and that, as to the ten years' of acquiescence, the husband has not been capable in the normal sense of dealing with the matter as he would have been if the wrong done him had not continued to master his mind. His lordship pronounced a decree *nisi*, with costs, against the co-respondent, but directed that the decree was not to be made absolute until the petitioner had made some proper provision for the respondent.

COUNSEL: *Cotes-Preedy*, K.C., and *Bush James*, for the petitioner.

SOLICITORS: *Stokes & Stokes*, for *James Storey & Sons*, Sunderland.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

United Law Society.

A meeting of the Society was held in the Middle Temple, Common Room on Monday, the 29th ult., Mr. E. H. Pearce in the chair. Mr. Duveen opened: "That in the opinion of this House any future appointment as Commissioner of the Police should be made from within the Force." Mr. Stemp opposed. There also spoke Messrs. Shanly, Ross, Brewis, MacMillan, Pritchard and Redfern. The motion was then put to the House and was lost by five votes.

The Solicitors' Managing Clerks' Association.

The twenty-third annual festival dinner of this important association will be held at The Wharncliffe Rooms, Hotel Great Central, Marylebone-road, on Thursday, the 29th inst., at 6.45 p.m. The President (Mr. F. D. Hammond, solicitor) will occupy the chair, and the distinguished guests will include the Lord High Chancellor (The Right Hon. Lord Hailsham), Mr. Justice Clauson, Mr. Justice McCardie, The Attorney-General (Sir Thos. Inskip, K.C., M.P.), Sir Patrick Hastings, K.C., Mr. W. A. Greene, K.C., and Mr. Norman Birkett, K.C. Tickets may be obtained from members of the association and from the Hon. Secretary (Mr. George E. Denton), 7, New-court, Lincoln's Inn.

The Yorkshire Board of Legal Studies.

ANNUAL MEETING.

The annual meeting of the Yorkshire Board of Legal Studies was held at the Leeds Law Society's Rooms, Albion-street, Leeds, on Wednesday, the 17th ult.

In moving the adoption of the report and balance sheet, the Chairman (Mr. E. Bramley) remarked on the progress made by University College, Hull, and the splendid way in which the various authorities had worked to get this school established. Professor Morgan (Chairman of University College), in acknowledging Mr. Bramley's words of appreciation, said that it would not have been possible to have commenced the work when they did but for the strong support given them by the board, and more particularly by the Hull Law Society and its members.

Dr. Bramley moved, and Mr. Herbert Denison (Leeds) seconded, the adoption of the report and balance sheet, and this was unanimously agreed to.

Mr. Herbert Boocock (Halifax) proposed the election *en bloc* of re-elected members of the Council, and this, having been seconded by Mr. Norman McQueen, D.S.O. (Bradford), was duly carried.

Mr. Harold Burrill, LL.B. (Leeds) proposed the re-election of the Auditors, which was seconded by Mr. R. Armstrong (Leeds), and carried.

The meeting concluded with a vote of thanks to the Chairman.

The Hardwicke Society.

At a meeting held in the Middle Temple Common Room on Friday, the 26th ult., Mr. L. A. Abraham (President) in the chair, Mr. Ifor Lloyd (I.T.), Vice-President, moved: "That the decision of the Bishops to permit the use of the Revised Prayer Book is incompatible with the continuance of the Establishment." Mr. Gerald Thesiger (I.T.) opposed the motion. There also spoke Sir Henry Slesser, K.C., M.P., Mr. F. W. Sherwood, Miss E. Bright Ashford, Mr. L. A. Abraham (President), Mr. G. Kennedy Skipton, Mr. H. J. Baxter, Mr. C. H. Pearson (Hon. Secretary), and Mr. R. S. Thorne. The opener having replied, a division was taken, and the motion was carried by thirteen votes.

Liverpool Rotary Club.

A plea for the teaching of the elements of law in the general scheme of education was made by Mr. Bertram B. Benas, B.A., LL.B., Barrister-at-Law, in an address at the Liverpool Rotary Club luncheon last week. Mr. Benas said that the popular attitude towards law could be grouped in three categories—consciousness of the need of law, fear of law, and love of law. In no small measure the greatness of the British Empire was due to the first. In Roman law countries there was a strong development of the second, and one small nation, Israel, had made a cult of the third. If the elements of law were taught to young people when they launched out into life there would be a different spirit and understanding of its value among lay people. A wider sense of law would ultimately mean a love of law and on those lines would a better society be built.

The Law of Master and Servant.

(*Continued from p. 730.*)

The fact that one servant is in a superior position to the other will not prevent their being in common employment, nor even the fact that one is in the position of authority over the other. To take an extreme instance, the captain of a ship, notwithstanding the very extensive powers vested in him for the maintenance of discipline on board, is none the less in common employment with the members of his crew: *Hedley* v. *Pinkney S.S. Co.*, 1894, A.C. 222.

This defence has been extended to exempt the master from liability where the injured person is not his servant, but a stranger assisting his servants in their work, voluntarily or at their request, and the injury is caused by the fault of those servants, or of others with whom they are in common employment.

In such a case the volunteer cannot claim against the master, for having exposed himself of his own free will to the ordinary risks of the work and made himself a partaker in them, he is not entitled to be indemnified against them by the master, any more than if he was in the latter's regular employment. He cannot, by volunteering his services, have any greater right against, or impose any greater duty on, the master than exists in respect of his ordinary servants, and his rights are merely those of the servants with whom he voluntarily associates. It has been said that this rule is based on an implied contract between the volunteer and the master, but it is difficult to see how a contract can be implied between a volunteer and one who does not know of his existence. Lord Justice Scrutton preferred to base it on the grounds that, as regards the master, the volunteer is a trespasser, and that the master is not liable for the negligence of his servants to a trespasser of whom the master has no knowledge (1917, 2 K.B.D., 911). But, whatever the reason for the rule, it is now a firm branch of our law (*Degg* v. *Midland Railway*, 1857, 1 H. & N. 773; *Potter* v. *Faulkner*, 1861, 1 Best and Smith 800), and a person who assists voluntarily under such circumstances cannot recover against the master.

But if a volunteer is assisting with the express or implied acquiescence of the master, and both the master and the volunteer each have an interest in the performance of the task in which the latter is assisting, the defence of common employment will not exempt the master from liability for injuries caused by his servants. This is best illustrated by the two well-known cases of *Degg* v. *Midland Railway*, 1857, and *Wright*, v. *L.N.W.R.*, 1876, 1 Q.B.D. 252. In both cases voluntary assistance was being given by the plaintiff to railway servants and while so doing, the plaintiff was injured by the negligence of other servants in common employment with those whom he was assisting. In the first case, the plaintiff had no interest in the work other than a desire to help men who were struggling with a task which was too heavy for them, and the Midland Railway was held not liable for his injuries. In the second case, the plaintiff was assisting to shunt a cattle truck, in which was a heifer belonging to him, to the only siding from which he could take delivery of the animal. It was proved that it was customary at Penrith for people to assist the two porters in this way, and that the stationmaster knew that he was so engaged. The court held that he was there with the implied assent of the company, and in furtherance of a common interest of himself and the company, to make the completion of the contract of carriage possible, and that he was, therefore, entitled to recover against the company for the negligence of their servants. The interest which the plaintiff is engaged in furthering need not be a personal one of his own; if he is engaged in furthering his employer's interest that is sufficient to prevent the rule of common employment defeating his claim (*Williams* v. *Linotype etc. Ltd.* [1914], 84 L.J., K.B. 1020).

(2) The second condition to be fulfilled which I mentioned was that the act causing the injury and the injury must occur whilst the servants are engaged in the course of their employment. If the servant, whose act is alleged to be the cause of the injury, was at the time acting outside the scope of his employment, there could under no circumstances be any liability on his master in respect of such an act. If the injured servant is not engaged in his duties at the time of the accident, he is in the same position as a member of the public, for he has only agreed to run the risk of injury from the acts of his fellow servants in the course of his work, and so the defence of common employment will not protect the master (*Dictum* in *Hutchinson* v. *York, etc. Ry. Co.*, 1850, 19 L.J. Ex. 296). This is, however, subject to a qualification. For the purposes of the rule of common employment a servant may still be engaged in his employment though he is not actively at work, provided he is going to or coming from his work and is still on his master's premises, or is using means of access, such as a train, provided by his master, either as a term of the contract between them or voluntarily by the master for the servant to make use of if he should so desire—*Tunney* v. *Midland Railway*, L.R., 1 C.P. 291; *Coldrick* v. *Partridge*, 1909, 54 SOL. J. 132.

(3) The third necessity is that the employment of the two servants should be "common," that is to say the safety of one must in the ordinary and natural course of things depend on the care and skill of the other. They need not however, both be engaged in achieving the same immediate object. A painter employed by a railway company and working on an engine shed is in common employment with the other railway servants engaged in the management of trains on the neighbouring metals, and a chorus girl and the scene shifters, and a member of a theatre orchestra and the stage manager have also been held to be in common employment: L.R. 1, Q.B.D. 149; 1907, 1 K.B.D. 554; 43 T.L.R. 30. But, on the other hand, it could not be said that the safety of a butler was dependent on the care of the factory hands or lorry drivers from his employer's works, or if a person carried on the business of brewer at one place and of banker at another, and a drayman from the brewery negligently ran over the bill clerk from the bank, though both were engaged in the course of their respective duties, the master would be liable. In "*The Petrel*," 1893, P. 320, the crew of a ship were held not to be in common employment with the crew of another ship owned by the same line when on a voyage, for their safety no more depended on the care of the crew of that particular ship than on the care of the crew of any other ship. That case was distinguished where one van driver in the employ of a Scottish railway company was injured by another van driver of the same company in the company's station yard, and the company was held not liable; but if the accident had occurred out on the highroad and it was only a coincidence that they were both employees of the same company, I think the principle of "*The Petrel*," would have applied, and the company would have been liable (*Lunnie* v. *Glasgow, etc.*, 1906, 8 F. 546).

Although it is usually in cases of personal injury that the defence of common employment is raised, it is equally applicable where the claim is for injury to property. If the servant's property is dependent for safety upon the care and skill of his fellows, then he also agrees to run the risk of injury to it though their fault, the master does not accept the risk; "*The Petrel*," 1893, p. 320.

The defence of common employment is not rendered inapplicable because the plaintiff servant is an infant, the contract of an infant servant being the same as that of an adult servant, the master accepting no further obligations because the servant is an infant. It may be that in the case of an infant more may require to be done to fulfil the master's obligations; e.g., where the employment is dangerous more instruction and warning may be required in the case of an infant than in that of an adult workman, but if the servant whose duty it is proved to be to give that instruction and warning negligently fails to do so properly, the master may rely on the defence of common employment the risk of that negligence being one which the servant, though an infant, impliedly agrees to run (*Cribb* v. *Kynoch*, 1907, 2 K.B.D. 548).

If an infant assists servants in their work voluntarily or at their request and is injured, the employer may rely on the defence of common employment just as he may when the volunteer is an adult. Unsuccessful attempts have been made to make the employer liable when the volunteer has been a young child, on the ground that the child was unable to appreciate the risks or to agree to accept them. But the defence of common employment has been applied in such circumstances by the Court of Appeal to children of fourteen (*Bass* v. *Hendon U.D.C.*, 1912, 28 T.L.R. 317, *Heasmer* v. *Pickfords*, 1920, 36 T.L.R. 818), and by the Scottish Courts to children of ten and eleven (*Lunnie* v. *Glasgow, etc.*, 1906, 8 F. 546), though the Irish Court of Appeal have held the other view (*Murphy* v. *Ross*, 1920, 2 I.R.).

If an injury to a servant can be shown to be due to failure by the master personally to perform his implied contractual duties, or to negligence by the master personally when taking some part in the work, then the servant can recover. The master does not warrant the competency of his servants, but he must exercise due care in their selection, whether they be operative hands or superiors engaged in supervising the work. He must also discharge those whom he knows to be incompetent: *Smith* v. *Howard*, 22 L.T.R. 130. He does not warrant the safety of the plant which his servants use, but he must exercise reasonable care to provide adequate plant in the first place, and also to see that it is kept in a fit state for the purposes for which it is used: *Ormond* v. *Holland*, 1858, E.B. & E. 102, 31 L.T. (o.s.); *Tarrant* v. *Webb*, 1857, 18 C.B. 797. He is not bound to provide the latest and most up-to-date plant, though failure to do so may in some cases constitute negligence on his part: *Toronto Power Co.* v. *Paskwan*, 1915, A.C. 734. If a servant is engaged in work which is dangerous in any way, the master must take reasonable care to instruct the servant

and warn him of the dangers: *Cribb* v. *Kynoch*, 1907, 2 K.B.D. 548; *Young* v. *Hoffman*, *ibid.*, 646. If these duties are delegated to a subordinate, reasonably selected as competent to perform them, and through his failure to carry out this duty the injury is caused, in order to recover, the servant must prove breach of duty on the part of the master as well as on the part of the subordinate, for if he can only prove the latter, that is only negligence of a fellow servant, which is a risk which he agrees to run just as he accepts the risk of any other injury from a fellow servant. And lastly the master will be liable for breach of a statutory duty imposed on him for the benefit of employees, even where a penalty is provided for breach of the duty, unless it appears expressly or by necessary implication that the penalty is the only remedy, to the exclusion of an action at law by the injured party: *Groves* v. *Wimborne*, 1898, 2 Q.B.D. 402; *Butler* v. *Fife Coal Co.*, 1912, A.C. 149.

Well, ladies and gentlemen, I think that is all that I can say to-night, knowing as I do that it is the law of the Medes and Persians that these meetings should end round about eight o'clock. I should like to thank you very much for the kind and attentive way in which you have listened to me this evening, and I am glad to see that I am not in the same position as the unfortunate lecturer who appears in this week's "Punch." At the end of the lecture he turns and says to the sole remaining member of the audience "Thank you very much, sir, for the kind way in which you have listened to me," to which that gentleman replies: "Oh, that is all right, I have to be here to propose a vote of thanks." I saw that for the first time last night and it struck me as rather an omen, but I am glad to see that my fears were unfounded.

The President (Mr. F. D. Hammond) proposed, and Mr. Elphick seconded, a vote of thanks to Mr. Welsford for his interesting lecture, to Mr. Justice Branson for presiding, and to the Benchers of the Inn for the use of the hall, which was carried unanimously.

Mr. Justice Branson in replying said; Mr. Hammond, Mr. Welsford, ladies and gentlemen, I think it is I who should have given the vote of thanks rather than being thanked to-night for having had the opportunity of listening to an able and most interesting lecture upon an interesting branch of the law. The subject and the circumstances of our meeting to-night have touched chords in my memory which tempt me to reminiscence. When I began the study of the law more years ago than I care to think of, filled with that youthful enthusiasm that spurs us always to criticise and correct the wisdom of our ancestors, I started to keep a list of those cases which seemed to me to be illogical or ill-founded, in order that when I should become in due course Lord Chancellor I could see to it that they should be put right.

One of the earliest of the cases which found a place in that precious list was the case of *Limpus* v. *London General Omnibus Company*. As I have no doubt all of you know, that was a case in which a 'bus driver having lost his temper with another 'bus driver, tried to obstruct him in the course of his driving, with the result that one of the 'buses—I have forgotten which—was overturned, and an action was brought against the London General Omnibus Company, who said: "Oh, but we gave our drivers the most definite instructions that they were not to race and not to obstruct other 'buses. How then can we be liable?" But the unsympathetic Court of Exchequer Chamber held that they were; and this struck me as rather illogical. Perhaps it is when you come to think that the liability of a man for the acts of his servant depends upon the theory that he has commanded or at least authorised, those acts, and therefore must be responsible for them.

But as one became a little less ignorant of the Common Law—and mark you in this connexion I speak of the Common Law; not of Equity, of which I know but little, and not of some statutes of which I know too much—when I got a little less ignorant of that subject it soon appeared that the Common Law of England is not a region in which logic is a very safe guide: and I was heartened to observe that a much greater lawyer than ever I would be, than ever I could be, Lord Halsbury, in the case of *Quinn* v. *Leatham*, said: "Every lawyer must acknowledge that the law is not always logical at all." "What then," says the student, "is the guide which I can follow in tracing out the intricacies of such a subject?" Well may you ask when you have heard the list of cases which have been discussed by Mr. Welsford to-night—one of them seeming to contradict the other, one of them seeming to have no logical connexion with the other at all. Well, I will answer that. The guide is common sense—educated common sense if you like, but still common sense. When you apply a little educated common sense to the case of *Limpus* v. *London General Omnibus Company* one sees at once that if you choose to employ a man to do a job of work you must take the risk of his doing it either well or ill, and if he does it ill and in doing it injures a third party you must pay, because you have set him to do the work.

You may say: "That is all very well but how does it square with the case that Mr. Welsford mentioned of two learned judges deciding on the same state of facts one way, one time, and six or seven years later another way?" The first answer is, that although the legal reporters have recorded the facts as identical, one or other of them may not be quite right. The second answer is, that those two learned judges had had six years in which to educate their commonsense between the time when they decided the first case and the time when they decided the second.

Ladies and gentlemen, that brings me to the second thing that I want to say. Some of you may know that I began my legal career in a solicitor's office. For two and a half years I was an articled clerk. In that office, though the rooms were lined with law reports they were never looked at. The theory there was that law was for the Temple and that the City was much too busy. If you wanted law you went to the Temple and you got it. May I respectfully suggest that that is not the proper attitude to take towards the subject? Occasions must arise in practice with all of us when one cannot follow what is no doubt the better way of looking up things oneself, or perhaps, from the point of view of the Bar, the more excellent way of paying somebody else to look them up for you. You sometimes have to give an opinion out of your head and at the moment; and, if you have to do that, may I suggest that the best guide that you can adopt is to apply your commonsense to the subject, and I trust that you will not often be wrong.

I read with much interest the last annual report of this Association, and one of the things that struck me as indicating its value was, as this occasion emphasises, the fact that it does encourage you to devote your attention to the assimilation of the law. When I was a legal clerk as I say, it was considered much more important that one should be able to find one's way in the labyrinth behind the Law Courts from, say, Room 72 to Room 100, where somebody's clerk would hand you out an order or something of that kind, without losing half an hour in trying to find your way across, than that you should be able to discuss a principle of law or tell what a certain case had decided.

It is because this Association exists amongst other things for the encouragement of a study of the law amongst those who have after all to do the lion's share of preparing work for decision that I think it is such an admirable thing to encourage. It is not only that, of course. Every profession, particularly every learned profession, is the better and the stronger for having an association which knits its members together, which gives them a feeling of *esprit de corps* and of unity, and we have it in these Inns, solicitors have it in the Law Society, and I am very glad indeed to see that Solicitors' Managing Clerks have it in this Association. Long may it flourish. (Loud applause.)

Legal Notes and News.

Honours and Appointments.

Mr. George Stanley Pott, B.A. (Oxon), solicitor (of the firm of Holmes, Son & Pott), Capel House, New Broad-street, E.C.2, has been appointed by The Law Society one of their representatives on the Incorporated Council of Law Reporting for England and Wales in the place of Mr. R. A. Pinsent, M.A., LL.D. (Birmingham), who has resigned. Mr. Pott was admitted in 1896.

Mr. Arthur Morley, barrister-at-law, has been appointed Recorder of Richmond (Yorks) in succession to Mr. Walter Hedley, K.C., recently appointed Recorder of Middlesbrough. Mr. Morley was called by the Middle Temple in 1913.

Mr. C. R. Marshall, solicitor, Doncaster, has been appointed Clerk to the Adwick-le-Street (Yorks) Urban District Council to fill the vacancy caused by the death of Mr. F. Allen. Mr. Marshall was admitted in 1923.

Mr. Lionel A. Venables, solicitor, Deputy Town Clerk of Middlesbrough, has been appointed Town Clerk of Colne. Mr. Venables was admitted in 1925.

Mr. B. R. Dunning, solicitor, Honiton (of the firm of Dunning, Rundle & Stamp), has been appointed Clerk to the Honiton Rural District Council in succession to the late Mr. E. W. Hellier. Mr. Dunning, who was admitted in 1920, is also Deputy Coroner of East Devon.

Mr. G. J. Bracey, solicitor (Chamberlin, Talbot & Bracey) Yarmouth, has been appointed Clerk to the Yarmouth Justices. Mr. Bracey, who was admitted in 1909, is also Deputy-Coroner for the County Borough of Great Yarmouth.

Professional Announcements

(2s. per line.)

The professional partnership heretofore subsisting between Sir HAROLD GEORGE DOWNER, Sir LOUIS STANLEY JOHNSON and Mr. RICHARD WILLIAM ROBERT ALLEN, carrying on business as solicitors, at 426, Salisbury House, London Wall, E.C., under the style or firm of Downer & Johnson, has been dissolved by mutual consent as from the 17th October, 1928, Sir Harold George Downer continuing to practise at 111, Moorgate, E.C.2, in partnership with Mr. Cyril Frederick Lewis under the style or firm of Downer & Lewis, Sir Louis Stanley Johnson and Mr. Richard William Robert Allen still continuing to practise at 426, Salisbury House, E.C.2, in partnership with Mr. Oswald Victor Baldwin under the style or firm of Stanley Johnson & Allen.

Messrs. TOZER & DELL, solicitors, Teignmouth (Devon) have, as from the 1st October, taken into partnership Mr. THEODORE HENRY EDGCOME EDWARDS, B.A. (Cantab.), who was admitted in 1926, and has been associated with the firm for some years. The style of the firm will, as from the date mentioned, be Tozer, Dell & Edwards.

Messrs. MACDONALD & STACEY, solicitors, 2 and 3, Norfolk-street, Strand, W.C.2, announce that as from the 1st October, the name of the firm will be altered to Macdonald, Stacey and Mant.

The firms of Messrs. GREEN & PATTEN and of Messrs. BACON, PHILLIPS & PRINGLE, solicitors, Redhill (Surrey), have been amalgamated, and the amalgamated practice will be carried on at 136, Station-road and Bank Chambers, Redhill, as hitherto.

Resignations, &c.

Mr. J. A. D. MILNE, Town Clerk of Shoreditch, has tendered his resignation (on account of ill-health) which will take effect on 31st March next, having been in the service of the council and its predecessors, the Shoreditch Vestry, for nearly forty years. He was made an Officer of the Most Noble Order of the British Empire in 1918 for services rendered during the war.

HARVARD LAW SCHOOL INTERNATIONAL SCHOLARSHIPS.

A trust fund of $500,000 (£100,000), to permit students of foreign countries to study international law at the Harvard Law School, has been established by Mr. Chester Dewitt Pugsley, a Harvard graduate.

The fund provides for sixty scholarships, one for each of the nations of the world and the British Dominions, along the lines of the Rhodes Scholarships at Oxford.

The beneficiaries will be appointed by the Foreign Minister of each State, or, in the case of the British Dominions, by the Prime Minister.

CHARTERED INSTITUTE OF SECRETARIES.

At a meeting of the Manchester and District Branch of the Chartered Institute of Secretaries, held at the Blackfriars Hall, Manchester, on Wednesday, the 17th ult., Mr. H. W. Jordan delivered an interesting lecture on "The Companies Act, 1928."

The preliminary, intermediate and final examinations of the Chartered Institute of Secretaries will be held on the 7th and 8th December, in London, Birmingham, Bristol, Cardiff, Hull, Manchester, Newcastle, Leicester, Sheffield, Glasgow, Edinburgh, Belfast and Dublin. Particulars may be obtained from the Institute, London Wall, London, E.C.2.

ALLEGED FALSIFICATION OF ACCOUNTS BY SOLICITOR'S CLERK.

Henry Thomas Protheroe, thirty-five, clerk, of Waldegrave-road, Upper Norwood, was committed for trial from Bow-street Police-court recently, on charges of falsifying accounts and stealing money belonging to his employers, Messrs. Amery, Parker & Co., solicitors, Arundel-street, Strand. The total amount of the deficiencies was stated to be over £1,000. The accused, who pleaded "Not Guilty," was allowed bail in £100 (reduced from £200).

MAYOR'S AND CITY OF LONDON COURT.

The following days have been appointed for the sittings in Guildhall before the Recorder and the Common Serjeant:—

27th November and 19th December, 1928; and, during 1929, 22nd January, 12th February, 12th March, 30th April, 14th May, 18th June, 9th July, 24th September, and 9th October.

BRITISH WIFE OF MOHAMMEDAN SET FREE.

An important legal point affecting British women married to Mohammedans and living in Indian States was decided in concurring judgments delivered in the Bombay High Court recently, by Justices Baker and Mirza, when they allowed the appeal by Mabel Ferris, a South African British subject, whose extradition to Baroda State on a charge of theft had been ordered by the Chief Presidency Magistrate, Bombay.

Mabel Ferris was married in the year 1914, in South Africa, to an Indian Mohammedan merchant from Baroda. It was alleged that she led a miserable life, which culminated in her leaving him. At the time of the marriage she was fourteen years of age, and she believed her husband to be a bachelor.

On returning to Baroda she found her husband already had an Indian wife, named Khatijibhai. Taking the Indian name of "Bhai Ayisa" she lived with the co-wife until the year 1927, when the co-wife died and the husband returned to Africa. The co-wife's son is then alleged to have treated Mabel Ferris cruelly, and to have turned her out of the house.

Her husband, on his return, charged her with the theft of jewellery, and she was arrested in Bombay, but discharged on grounds of insufficient evidence. Later she was rearrested in Baroda, but the Baroda Government applied for her extradition from Bombay to Baroda, where her husband was living when the alleged theft occurred.

The High Court has now held that by marrying a subject of the Baroda State the woman did not cease to be a British subject, and was entitled to the privileges of British subjects under the Extradition Act. The justices further remarked that, as the woman was married under Christian law to a man already married, it is presumed that the man's marriage was polygamous, and therefore illegal.

The court ordered Mabel Ferris to be set at liberty immediately, cancelling the bail bonds, and thus ending the woman's unfortunate position.

MAN COMMITTED TO WRONG ASSIZES.

Charging the Grand Jury at Lincoln Assizes on Tuesday, Mr. Justice MacKinnon said that, by an error on the part of someone, a man was committed from some petty sessions, but without authority, to Notts Assizes, whereas he should have been committed to Lincoln Assizes. When brought up at Notts Assizes the judge discharged him as the court had no jurisdiction to try him. By direction of the Attorney-General, the indictment would now be presented against the man at Lincoln.

BUILDING SOCIETIES' BIRTHDAY.

The National Association of Building Societies, of which Lord Cecil of Chelwood is president, is organising a special delegate conference in London on 3rd and 4th December to celebrate the 147th anniversary of the establishment of the first building society—founded at Deritend, near Birmingham, on 3rd December, 1781—of which there is any definite record. The proceedings will open with a dinner in Guildhall on 3rd December, at which the Lord High Chancellor, Lady Astor, and Mr. Philip Snowden will be the principal speakers. In the absence of Lord Cecil, Sir Enoch Hill, chairman of the executive committee, will preside. The conference on 4th December will be held in the Mansion House, and afterwards the country delegates will be entertained at luncheon at the Cannon-street Hotel by the Metropolitan Building Societies Association, when Lord Riddell will preside. The speakers on that occassion will include Mr. J. R. Clynes, Sir Josiah Stamp and Lady Iveagh.

A FORMER COUNTY COURT JUDGE'S AFFAIRS.

A sitting of the Bankruptcy Court was held recently before Mr. Registrar Mellor, for the adjourned public examination of His Honour Judge Henry Staveley Staveley-Hill, described as of 94, Pall Mall, S.W. The order of adjudication was made on 18th September, 1928.

The debtor was elected M.P. for Kingswinford Division of Staffordshire in 1905. He was appointed a county court judge (Circuit 23) in 1922, and held that position until the failure, but then resigned. He attributed his insolvency to having lived in excess of income and to interest charges.

The Official Receiver reported that the examination had stood over to enable the debtor to submit a proposal, but none had been lodged.

The examination was concluded.